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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

LAURA BUCKI, Plaintiff and Appellant, v. CITY OF CORONA, Defendant and Respondent.	E068910 (Super.Ct.No. RIC1608070) OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge. Affirmed.

Drociak & Yeager and Kenneth C. Yeager for Plaintiff and Appellant.

Dean Derleth, City Attorney and John D. Higginbotham for Defendant and Respondent.

Plaintiff and appellant Laura Bucki (Bucki) sued defendant and respondent City of Corona (the City) for premises liability.[1] The trial court granted summary judgment in favor of the City. Bucki contends the trial court erred by granting summary judgment. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

A. COMPLAINT

Bucki alleged that on February 2, 2016, there was "an open floor plate that had been covering a utility box" at the City's library. The missing plate created a hole in the floor, which caused Bucki to suffer an injury. Bucki sought compensatory damages according to proof.

B. MOTION FOR SUMMARY JUDGMENT

The City moved for summary judgment. The City asserted that Bucki's lawsuit was based upon Bucki allegedly being injured "when her chair leg got caught in a small opening in an electrical conduit cover in the floor of the Corona Public Library, while she was trying to seat herself at a public computer station." The City asserted the two-inch circular opening in the plate did not meet the definition of a dangerous condition of public property because it did not create a substantial risk of injury, in that (A) there was no history of an injury being caused by a missing piece of a floor plate, and (B) the opening could have been easily avoided because it was in a well-lit area, it was flush

[1] In the body of Bucki's complaint, she alleges the cause of action is against the City of Rialto. We infer this is a typographical error, and she intended to bring the cause of action against the City of Corona because the City of Corona is named in the caption of the complaint.

with the floor, and it was located to the side of the chair—not directly in the chair's path. A photograph included with the motion shows a plate on the floor and a missing circular piece in the center of the plate creating a hole.

Second, the City asserted there was no evidence that the City created the opening in the floor or that the City had actual or constructive knowledge that a piece of the floor plate was missing. The City speculated that anyone could have removed the center piece of the floor plate, including Bucki. The City asserted the library floor is 62,000 square feet, which equals 9,000,000 square inches, and therefore, it was reasonable to conclude that the City was unaware of a two-inch hole in the floor. The City asserted no patrons had reported that the center piece of the floor plate was missing. The City asserted Bucki failed to provide evidence of how long the center piece of the floor plate had been missing.

C. OPPOSITION

Bucki opposed the City's motion for summary judgment. Bucki explained that "at appro[ximately] 11:37 [a.m.] as [Bucki] was adjusting her chair to use a computer at the City of Corona Library one of her chair legs fell into a 2-3 inch hole in the floor causing her to suffer a slip and fall, which resulted in serious physical injury to [Bucki]. [¶] Immediately after the fall [Bucki] looked around to see why her chair gave way on her. [Bucki] discovered that one of the chair legs had sunk into a large hole in the floor. At which time [Bucki] looked around for a floor covering, which she did not see in the immediate area. Afterward [Bucki] informed the librarian, and they both went back to

where the hole in the floor was located, and neither one of them could find a covering for the floor hole at that time."

Bucki argued, "An uncovered hole in the floor of the library that is not readily seen is a dangerous condition." Bucki asserted that the lack of the center cover piece in the area of the hole indicated the center piece of the cover "was either taken away by an employee prior to the accident, and/or the covering had been missing from the hole for a period of time. Which a proper inspection of the premises prior to opening the library would have revealed the uncovered hole, and either repairs could have been made, or a warning posted."

D. HEARING

The City's reply to Bucki's opposition is not included in the record on appeal. A reporter's transcript is not included in the record on appeal. The register of actions reflects the following concerning the trial court's hearing on the City's motion, "No appearance made by either party. The Court notes [its] tentative ruling was posted and no request for oral argument was made for today's hearing. The tentative ruling is confirmed as follows: [¶] Summary judgment on Complaint of Bucki for Defendant(s) City of Corona is Granted." (All caps. omitted.)

E. ORDER

The trial court issued a written order granting the City's motion for summary judgment. The order reflects, "[Bucki] cannot prove the existence of a dangerous condition of public property under Government Code [section] 830, *et seq*., and [Bucki] cannot prove that the City of Corona negligently created or had prior actual or

constructive notice of the alleged dangerous condition under Government Code [section] 835, *et seq.*"

DISCUSSION

A. STANDARD OF REVIEW

" 'A trial court properly grants a motion for summary judgment only if no issues of triable fact appear and the moving party is entitled to judgment as a matter of law. [Citations.] The moving party bears the burden of showing the court that the plaintiff "has not established, and cannot reasonably expect to establish, a prima facie case . . . ." [Citation.]' [Citation.] '[O]nce a moving defendant has "shown that one or more elements of the cause of action, even if not separately pleaded, cannot be established," the burden shifts to the plaintiff to show the existence of a triable issue; to meet that burden, the plaintiff "may not rely upon the mere allegations or denials of its pleadings . . . but, instead, shall set forth the specific facts showing that a triable issue of material fact exists as to that cause of action . . . ." '

" 'On appeal from the granting of a motion of summary judgment, we examine the record de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party.' " (*Lyle v. Warner Bros. Television Productions* (2006) 38 Cal.4th 264, 274.)

B. CONTENTION

Bucki contends the trial court erred by granting summary judgment because the City's failure to inspect the library floor prior to opening for the day created a dangerous condition of public property. Bucki asserts the issue in the case is not

whether the City had notice of the hole in the floor, and the issue is not who removed the center of the cover plate. Rather, Bucki identifies the issue as whether an employee created the dangerous condition by not inspecting the floor prior to opening the library on February 2, 2016.

C. LAW

"Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

"(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

"(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (Gov. Code, § 835.)[2]

"A public entity had constructive notice of a dangerous condition within the meaning of subdivision (b) of Section 835 only if the plaintiff establishes that the condition had existed for such a period of time and was of such an obvious nature that the public entity, in the exercise of due care, should have discovered the condition and

[2] All subsequent statutory references will be to the Government Code unless otherwise indicated.

its dangerous character. On the issue of due care, admissible evidence includes but is not limited to evidence as to:

"(1) Whether the existence of the condition and its dangerous character would have been discovered by an inspection system that was reasonably adequate (considering the practicability and cost of inspection weighed against the likelihood and magnitude of the potential danger to which failure to inspect would give rise) to inform the public entity whether the property was safe for the use or uses for which the public entity used or intended others to use the public property and for uses that the public entity actually knew others were making of the public property or adjacent property.

"(2) Whether the public entity maintained and operated such an inspection system with due care and did not discover the condition." (§ 835.2, subd. (b).)

D. ANALYSIS

Bucki's legal argument combines two different legal theories. The first part of Bucki's legal theory is derived from section 835, subdivision (a), which provides that a public entity can be held liable if the omission of an employee created the dangerous condition. The second part of Bucki's legal theory appears to be derived from the law related to constructive notice, which concerns liability under section 835, subdivision (b). The law provides that evidence of constructive notice may include evidence pertaining to a public entity's inspection system. (§ 835.2, subd. (b).) Bucki is combining the two different theories by arguing that an employee's omission in inspecting the floor created the dangerous condition.

Bucki's partial reliance on section 835, subdivision (a), is problematic because she fails to explain how the employee's failure to inspect *created* the dangerous condition. Bucki's inspection argument reflects that the employee failed to *discover* the dangerous condition, and that condition may have been created by an unknown person/people. Because Bucki does not explain how a failure to inspect created the hole in the floor, her cause of action fails under section 835, subdivision (a), which requires that the employee's omission "created the dangerous condition."

Bucki's partial reliance on section 835, subdivision (b), is problematic because she fails to demonstrate the City had "a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (§ 835, subd. (b).) Bucki asserts that she provided evidence that the center of the cover plate was not in the immediate area of the hole at the time of her fall, and that evidence shows "the covering had been missing from the hole for a period of time."

Bucki fails to explain when the center of the cover plate may have been removed. For example, Bucki does not indicate (1) if the center of the cover plate was removed the night before by janitorial staff, and thus would have been discovered upon a daily morning inspection of the library floors; or (2) if the center of the cover plate was removed by a patron five minutes before Bucki fell, such that the hole would not have been discovered upon a daily morning inspection of the library floors.[3] Bucki's failure

[3] We are not concluding the City had a duty to inspect its floors on a daily basis. (See § 835.2, subd. (b)(1) ["an inspection system that was reasonably adequate"].) Rather, we are illustrating the lack of evidence supporting Bucki's claim.

to provide evidence concerning the amount of time the City had to discover the hole in the floor causes her claim to fail under section 835, subdivision (b), which requires the entity to have had "a sufficient time prior to the injury to have taken measures to protect against the dangerous condition." (See also *Nishihama v. City and County of San Francisco* (2001) 93 Cal.App.4th 298, 303 [plaintiff was "required to show that the City had . . . sufficient time prior to the injury to have taken measures to protect against it"].)

In sum, Bucki has relied upon pieces of different subdivisions, and, as a result, failed to meet the complete requirements of either subdivision. Therefore, we conclude the trial court did not err by granting summary judgment.

DISPOSITION

The judgment is affirmed. Respondent is awarded its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

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MILLER
J.

We concur:

RAMIREZ
P. J.

SLOUGH
J.